

**EXHIBIT R TO
CISNEROS DECLARATION IN
SUPPORT OF PLAINTIFFS'
SUPPLEMENTAL MOTION FOR
CLASS CERTIFICATION
[ECF NO. 418-2]
REDACTED VERSION**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH TECH EMPLOYEE)
ANTITRUST LITIGATION)
) No. 11 CV 2509 LHK
THIS DOCUMENT RELATES TO:)
ALL ACTIONS.)
_____)

HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

VIDEO DEPOSITION OF SERGEY BRIN

MARCH 19, 2013

Reported by: Rosalie A. Kramm, CSR No. 5469, CRR

10:16:54 1 context?")

10:16:54 2 THE REPORTER: Do you want me to give him more
10:16:54 3 context?

10:16:54 4 MR. HEIMANN: No. That's okay.

10:16:55 5 Q. I'm just asking if you are familiar with the
10:16:56 6 notion of bidding wars.

10:16:57 7 A. I mean I

10:16:57 8 MR. RUBIN: Objection. Form.

10:16:58 9 THE WITNESS: I I mean I understand the
10:16:58 10 phrase. I don't, you know

10:16:59 11 BY MR. HEIMANN:

10:16:59 12 Q. That's good. What does it mean?

10:17:01 13 MR. RUBIN: Objection. Form.

10:17:01 14 THE WITNESS: What does it mean?

10:17:02 15 I I think it's probably when people use it
10:17:03 16 in the context like that, I think that they're taking a
10:17:04 17 lot of metaphor. I mean obviously nobody is really at
10:17:07 18 war. So, you know, I think it is a colorful way of
10:17:08 19 describing a process of making offers and counteroffers
10:17:09 20 to candidates.

10:17:10 21 BY MR. HEIMANN:

10:17:10 22 Q. A little bit further down in this email, "The
10:17:11 23 trick is" are you with me?

10:17:11 24 A. "The trick is," yes.

10:17:12 25 Q. "The trick is, we don't want to announce 'we

10:17:13 1 will match any other offers'. This would encourage
10:17:14 2 gaming of us by candidates and competitors, and would
10:17:15 3 also likely drive inflation in the bidding war."

10:17:17 4 Do you see that?

10:17:17 5 A. Uh huh.

10:17:18 6 Q. Now, do you have an understanding of what
10:17:18 7 "inflation in the bidding war" in this context means?

10:17:20 8 A. Okay. So this is me interpreting Shona from
10:17:22 9 nine years ago. I think that she was saying that if it
10:17:23 10 was broadly believed that Google would match any other
10:17:24 11 offer from any other company, then it would cause
10:17:25 12 candidates to perhaps trick us, or competitors to trick
10:17:26 13 us by simply, you know, making an outlandish offer to a
10:17:28 14 candidate and say, oh, well, we're going to pay you \$10
10:17:30 15 million, you know, just to start, and they would take
10:17:30 16 that to Google, and they would be under the impression
10:17:32 17 that Google would have to match that.

10:17:33 18 Yes. So it would be silly to have either a
10:17:34 19 policy or a broad belief that we would simply blindly
10:17:35 20 match any other offer.

10:17:36 21 Q. And then she went on to write, "We also don't
10:17:37 22 want to go out of alignment from an internal equity
10:17:38 23 perspective." Do you see that?

10:17:39 24 A. I do see that.

10:17:40 25 Q. Do you have an understanding as to what

10:17:40 1 "internal equity" means in this context?

10:17:41 2 A. In this case I imagine she was talking about
10:17:42 3 the notion that if we were to hypothetically match
10:17:43 4 another offer from another company, and it was way out of
10:17:45 5 whack, then other of our employees who are, let's say, at
10:17:47 6 the same level, a similar performance, might have a lower
10:17:48 7 compensation and be upset about that.

10:17:50 8 Q. Was the notion of internal equity in that
10:17:51 9 context of any importance to Google in terms of its
10:17:52 10 practices with its employees?

10:17:54 11 MR. RUBIN: Objection. Form.

10:17:54 12 THE WITNESS: Sorry. Can you repeat that?

10:17:55 13 BY MR. HEIMANN:

10:17:55 14 Q. Was the notion of internal equity in this
10:17:56 15 context of any significance to Google in terms of how it
10:17:58 16 dealt with its employees?

10:17:58 17 MR. RUBIN: Same objection.

10:17:59 18 THE WITNESS: I look, I I think we care
10:18:00 19 about fairness broadly and certainly with respect to
10:18:01 20 compensation of our employees, and if there is a
10:18:02 21 perception or a reality that some employees are getting
10:18:04 22 disproportionately higher compensation or, you know,
10:18:06 23 probably the worst thing is if they are getting
10:18:09 24 disproportionately lower compensation for similar
10:18:12 25 performance, that would work, you know, against fairness.

10:18:17 1 BY MR. HEIMANN:

10:18:17 2 Q. When did you first become acquainted with Steve
10:18:20 3 Jobs?

10:18:26 4 A. I don't remember exactly, but I think it was
10:18:29 5 I'd say around 2000, plus or minus.

10:18:34 6 Q. And how would you characterize your
10:18:36 7 relationship with him?

10:18:40 8 A. Over back then or over time or

10:18:42 9 Q. Well, let's start at the beginning, and then
10:18:44 10 we'll move forward in time.

10:18:46 11 A. I you know, I I think in the early years
10:18:50 12 I didn't, you know I didn't speak with him that often.
10:18:53 13 I probably spoken to him a dozen times. But, you know, I
10:19:00 14 had a lot of respect and have a lot of respect for Steve.
10:19:04 15 He was very accomplished, very visionary. You know, he
10:19:09 16 gave Larry and I advice over time about the company.

10:19:14 17 At various times we had some partnerships and
10:19:19 18 maybe a couple of times intersected at some social
10:19:22 19 events.

10:19:24 20 Q. In that answer you used the term "early years,"
10:19:28 21 what do you mean by that?

10:19:29 22 A. Kind of saying maybe 2000 to 2007 ish. I
10:19:38 23 mean our relationship significantly declined after Apple
10:19:43 24 came out with the iPhone and Google came out with
10:19:46 25 Android.

10:19:46 1 Q. And that is circa what?

10:19:48 2 A. That was 2007, I think.

10:19:55 3 Q. Well, it is a matter of record.

10:19:57 4 A. Yeah. Yeah. We can look it up. I don't want
10:19:59 5 to embarrass myself, but

10:20:01 6 Q. Not a problem. All right. So, I'm sorry,
10:20:03 7 could you describe how your relationship developed over
10:20:06 8 what during the good period, I guess you could say?

10:20:09 9 A. I mean, look, Steve was always an emotional
10:20:13 10 fellow. There were some rough patches. And it's not
10:20:15 11 like I interacted with him that much, but, yeah, he
10:20:19 12 was I think he was generally friendly to us. He saw
10:20:22 13 Larry and I as, you know, young entrepreneurs, and you
10:20:28 14 know, I think he gave us some advice. We had some
10:20:32 15 business interaction, too. And you know, from my point
10:20:39 16 of view he was just a very interesting and remarkable,
10:20:41 17 talented person. I wish in retrospect I spent more time
10:20:46 18 with him.

10:20:46 19 Q. How frequently did you have communications with
10:20:48 20 him in those periods before the i I'm sorry iPhone,
10:20:55 21 Android?

10:20:57 22 A. I mean I'm going to say about a dozen times
10:21:00 23 total, probably, of any substantive interaction. Like I
10:21:02 24 said, I wish I had more.

10:21:04 25 Q. You are talking about a dozen over the several

10:21:06 1 years that we're talking about?

10:21:08 2 A. Yeah, a dozen over yeah. I mean I don't
10:21:10 3 know. Probably a dozen over all time, but in that on
10:21:13 4 that order of magnitude.

10:21:14 5 Q. And when you're saying "all time," are we
10:21:17 6 talking about 2000 up until his death in 2000 I
10:21:21 7 forgot, when was it, 2012?

10:21:23 8 A. Yeah. I mean yes. Up until yeah, that
10:21:26 9 sounds about right, 2012, or was it 2011?

10:21:30 10 Q. Again, that is a matter of record.

10:21:31 11 A. Yes.

10:21:32 12 Q. We don't have to worry about that.

10:21:34 13 So were these contacts for the most part by
10:21:37 14 telephone or in person or what?

10:21:40 15 A. I had a few phone calls with him. I took a few
10:21:43 16 walks with him. And I had, like, a few meetings at his
10:21:47 17 house or his office. I don't recall him ever coming here
10:21:50 18 to meet me. So yeah.

10:21:54 19 Q. I'd forgotten. I knew this once, but either
10:21:56 20 you or your partner, Mr. Page, lived close by him.

10:22:01 21 A. Yes. My partner, Larry, lives near him, yeah.

10:22:04 22 Q. But you didn't.

10:22:05 23 A. I did not.

10:22:06 24 Q. All right. All right. Do you recall a
10:22:10 25 conversation or a number of conversations with Mr. Jobs

10:22:14 1 in roughly mid 2000 well, early 2005, I'll pinpoint
10:22:20 2 it, but it is more the substance that I'm interested in,
10:22:23 3 where he was complaining to you about Google recruiting
10:22:25 4 from Apple?

10:22:28 5 A. I hadn't recalled them specifically, but you
10:22:33 6 know, in preparation for this event, I reviewed some
10:22:36 7 emails that jogged my memory about that.

10:22:37 8 Q. Tell me what you do remember about it. I'll
10:22:40 9 get to the emails in a little bit.

10:22:42 10 A. Okay. You know, Steve at various times would
10:22:48 11 call me or, you know, send me an email or more often
10:22:56 12 than not it was when he was upset about something, and I
10:23:00 13 think the times you're referring to were with respect to
10:23:05 14 Google hiring out of Apple, and mostly, specifically with
10:23:13 15 respect to the Safari team.

10:23:16 16 Q. Do you recall anything more about the substance
10:23:18 17 of the interaction you had with Mr. Jobs in in that
10:23:22 18 occasion?

10:23:23 19 A. Once again, some of this recollection is just
10:23:26 20 based on me seeing emails which I reviewed yesterday.

10:23:30 21 But I remember he was quite irate about hiring,
10:23:34 22 you know, members of the technical Safari team, which he
10:23:38 23 was passionate about, and felt like he was just he
10:23:44 24 was emotional. He would get angry about things. That
10:23:48 25 made him particularly angry.

10:23:50 1 Q. Do you remember anything more about the
10:23:53 2 exchange that you had with him?

10:23:54 3 A. I think the first fellow that kind of upset him
10:23:58 4 was this fellow, [REDACTED], I want to say, and what
10:24:05 5 else should I say about that?

10:24:08 6 Q. I'm just trying

10:24:08 7 A. Yeah.

10:24:08 8 Q. to understand what you recall of it at this
10:24:11 9 point.

10:24:11 10 A. Yes. Yes. I mean it's very hard for me to
10:24:16 11 separate what I recall from the phone call versus the
10:24:20 12 email like yesterday about it.

10:24:21 13 You know, I just I recall Steve would call,
10:24:23 14 be agitated, and I'd have to try to calm him down.

10:24:29 15 Q. Well, did you come to some understanding with
10:24:31 16 him in the course of the conversations about what he was
10:24:33 17 complaining about?

10:24:35 18 MR. RUBIN: Objection. Excuse me. Objection.
10:24:36 19 Form.

10:24:37 20 THE WITNESS: I mean I typically did not enjoy
10:24:39 21 discussing those kinds of business issues, so I would
10:24:41 22 hear him out, try to calm him down, and then I would
10:24:44 23 relay the concerns to the rest of the management team.

10:24:47 24 BY MR. HEIMANN:

10:24:48 25 Q. Who in terms of the management team did you

10:24:49 1 relay those concerns to?

10:24:52 2 A. Once again, this is upon my recollection based
10:24:55 3 upon reviewing emails.

10:24:56 4 I would have probably raised it at you know,
10:25:01 5 senior executive team, either by email or in a meeting,
10:25:06 6 and but probably mostly leave it in Eric Schmidt's
10:25:13 7 lap.

10:25:15 8 Q. When you refer to the senior executive team,
10:25:18 9 are you talking about now the EMG?

10:25:20 10 A. You know, the name varied over time, so I
10:25:23 11 yes, probably EMG. I can't remember what the email alias
10:25:27 12 was in that year precisely.

10:25:29 13 Q. Whatever the term was

10:25:30 14 A. Yeah.

10:25:30 15 Q. at the time.

10:25:31 16 A. Yeah, the top level executives. I probably
10:25:33 17 would have relayed that issue to them.

10:25:39 18 Q. And you're saying that because not
10:25:41 19 necessarily that you actually remember it, but that's
10:25:43 20 what you typically would have done; is that right?

10:25:46 21 MR. RUBIN: Objection. Form.

10:25:51 22 THE WITNESS: I mean it is what I typically
10:25:52 23 would have done, but my vague recollection is that I did
10:25:55 24 that in this case.

25 //

10:25:56 1 BY MR. HEIMANN:

10:25:56 2 Q. And did that specifically, as you referred
10:25:59 3 it to the team or you referred it to Schmidt, or exactly
10:26:03 4 what?

10:26:03 5 A. I mean Schmidt is on the team, therefore both.
10:26:07 6 I primarily probably would have left it to Eric
10:26:10 7 to handle, but I think I made everybody aware of it.

10:26:17 8 Q. Okay. Let's take a look at the emails
10:26:20 9 exchange.

10:26:21 10 A. Okay.

10:26:21 11 Q. That may help things along. Let's start with
10:26:24 12 Exhibit 557. I suspect this is one of the things you
10:26:41 13 looked at yesterday, but why don't you take a minute to
10:26:43 14 read through it quickly.

10:26:51 15 A. All right. Yeah. Yes.

10:27:06 16 Q. Okay. So first of all, the email that starts
10:27:09 17 us off is your February 13th email that is 1:06 a.m. Do
10:27:14 18 you think that's accurate, by the way?

10:27:16 19 MR. RUBIN: Objection to form.

10:27:23 20 THE WITNESS: I'm not sure, to be perfectly
10:27:25 21 honest. I mean I it wouldn't have been shocking for
10:27:28 22 me to be up late like that, but I'm looking at the 4:29
10:27:32 23 response. I don't know. It's possible. I'm not sure.

10:27:35 24 BY MR. HEIMANN:

10:27:35 25 Q. Well, let's not worry about that. I don't

10:27:37 1 think that is going to make or break the case here.

10:27:39 2 So you start off with an email to EMG at

10:27:41 3 google.com and to Joan is it Braddi?

10:27:46 4 A. Braddi.

10:27:46 5 Q. Braddi. First of all, who was she at the time?

10:27:50 6 A. Joan was I can't remember the exact title,

10:27:53 7 but she was a high level executive for business

10:27:57 8 development, and I assume I copied her because she was in

10:28:00 9 charge of the Apple partnership.

10:28:03 10 Q. And what was the Apple partnership?

10:28:06 11 A. Once again, this is my recollection. Hopefully

10:28:10 12 the timing lines up. One thing would have been that we

10:28:13 13 powered the search box on the Safari browser. There

10:28:17 14 might have been a few other elements to it, too.

10:28:20 15 Q. All right. And as best you recall, who was on

10:28:23 16 the EMG email at the time?

10:28:25 17 A. All right. Wow. You want me to list all the

10:28:27 18 people? Okay.

10:28:28 19 Q. If you can, sure.

10:28:29 20 A. I can try. Omid Kordestani would have been on

10:28:33 21 it, Jonathan Rosenberg, Eric Schmidt, Larry Page. Who

10:28:41 22 would have been on this alias?

10:28:45 23 Q. Shona Brown?

10:28:46 24 A. Maybe. I don't remember. Sorry.

10:28:48 25 Q. That's okay.

10:28:49 1 A. Not positive. It's fluctuated over the years.

10:28:52 2 Susan Wojcicki might have been on it. I can't
10:28:54 3 remember if she was on it that year. There would have
10:28:57 4 been probably Alan Eustace at the time. Urs Holzle. I
10:29:12 5 can't recall if Wayne Rosen had resigned by then or not,
10:29:17 6 or retired, I should say. Yeah.

10:29:19 7 Q. I'm sorry. I didn't mean to interrupt you.

10:29:21 8 Is it fair to say that over the time that there
10:29:25 9 was an EMG, which is executive management group, is what
10:29:29 10 it stands for, right?

10:29:30 11 A. Correct.

10:29:31 12 Q. Whoever the individuals were by name, it would
10:29:33 13 have been senior people at the company?

10:29:35 14 A. Yeah. Yeah. It would have been the typical,
10:29:38 15 you know, if there was just some issue I wanted to to
10:29:43 16 get addressed or forward that was significant to the
10:29:48 17 company, but was not, like, obvious, I just need to talk
10:29:51 18 to this one person, I would just relay it to that list
10:29:54 19 and, you know, they'd be made aware.

10:29:56 20 Q. Did Google have a general counsel at this
10:29:58 21 point? This is after the IPO?

10:30:02 22 A. Yes. That would have been David Drummond.

10:30:05 23 Q. Was he on the EMG as well or no?

10:30:07 24 A. I assume so. Yeah. I can't swear to it.

10:30:13 25 Pretty sure.

10:30:13 1 Q. It's all right.

10:30:14 2 A. It has changed over time, so

10:30:16 3 Q. Fair enough.

10:30:16 4 A. Yeah.

10:30:17 5 Q. All right. So in this email you start off by

10:30:19 6 saying, "So I got a call from Steve Jobs today"

10:30:22 7 A. Yes.

10:30:23 8 Q. "who is very agitated. It was about us

10:30:25 9 recruiting from the Safari team."

10:30:28 10 A. Uh huh.

10:30:28 11 Q. "He made" I'm skipping a sentence here. "He

10:30:32 12 made various veiled threats, too, though I'm not inclined

10:30:36 13 to hold them against him too much, as he seemed beside

10:30:37 14 himself (as Eric would say)."

10:30:41 15 A. Parentheses.

10:30:42 16 Q. Parentheses. Thank you. Right.

10:30:47 17 Is this some strike that.

10:30:49 18 Is this kind of interaction with Jobs something

10:30:52 19 that had occurred on prior occasions; by that I mean when

10:30:55 20 he was irritated and making threats?

10:30:57 21 A. Generally, yes. Steve being agitated was not

10:31:01 22 unusual. Looking back I mean I can't recall whether

10:31:07 23 there were times before 2005 and after. I imagine there

10:31:10 24 were both. There certainly were times after. And I'm

10:31:14 25 pretty sure there were times before. Yes. So Steve was,

10:31:17 1 you know, very passionate and he would get upset about
10:31:22 2 some things. So it was not that shocking that he would,
10:31:25 3 you know, call up and express his anger.

10:31:28 4 Q. All right. And moving down a little in the
10:31:34 5 email, I'm picking up with the last sentence of the
10:31:37 6 second paragraph, you said, "I also said I would follow
10:31:40 7 up and check on our recruiting strategies" I'm not
10:31:45 8 sure what that

10:31:45 9 A. "WRT," with respect to.

10:31:49 10 Q. Thank you "Apple and Safari. He seemed
10:31:53 11 soothed. So I just wanted to check what our status was
10:31:55 12 in various respects and what we want to do about
10:31:58 13 partner/friendly companies and recruiting. On the
10:32:01 14 browser I know and told him that we have Mozilla people
10:32:05 15 working here." And then dropping down a little bit more,
10:32:08 16 "I mentioned this to Steve, and he told me he was cool
10:32:16 17 with us hiring anyone who came to us, but was angry about
10:32:18 18 systematic solicitation."

10:32:21 19 Skipping down a bit more, "So please update me
10:32:24 20 on what you know here and on what you think we should
10:32:26 21 have as a policy."

10:32:27 22 Let me stop there.

10:32:28 23 So that is in effect a question you are putting
10:32:31 24 to the folks that you addressed the email to, fair?

10:32:36 25 A. Sorry. That being what do you mean by

10:32:38 1 "that"?

10:32:39 2 Q. "Please update"

10:32:41 3 A. Everything you read? Oh, so "Please update
10:32:42 4 me"?

10:32:43 5 Q. "On what you think on what you think we
10:32:46 6 should have as a policy."

10:32:48 7 A. Yes. I wanted somebody in the group to just,
10:32:50 8 you know, think about it and get back to me so I could
10:32:53 9 say something intelligent.

10:32:55 10 Q. Okay. So now all of that was just so I could
10:32:57 11 ask this question.

10:32:58 12 A. Okay.

10:32:59 13 Q. What, if anything, do you recall of the
10:33:00 14 conversation or conversations that you had with the
10:33:02 15 senior people at Google at this point in time about that?

10:33:08 16 A. Let's see. Well, this was on Valentine's Day,
10:33:14 17 Shona's reply, on Monday. We typically would have had
10:33:19 18 meetings on Mondays, so perhaps it would have been
10:33:22 19 discussed, but it is so long ago I just I don't
10:33:25 20 remember.

10:33:25 21 Q. Fair enough. As I'm sure you've been told, the
10:33:30 22 answer "I don't remember, I don't recall" is perfectly
10:33:33 23 acceptable

10:33:35 24 A. Yeah.

10:33:35 25 Q. here if you don't. All right.

10:36:03 1 MR. RUBIN: Yeah, you shouldn't you

10:36:05 2 shouldn't get into anything

10:36:09 3 THE WITNESS: Sorry.

10:36:09 4 MR. RUBIN: about what you did or didn't

10:36:09 5 review unless it refreshed your recollection.

10:36:12 6 THE WITNESS: Sorry.

10:36:12 7 MR. RUBIN: Mr. Heimann will know to pursue if

10:36:13 8 it did.

10:36:14 9 THE WITNESS: Sorry. Okay.

10:36:14 10 BY MR. HEIMANN:

10:36:14 11 Q. So all I'm going to point out to you to assist

10:36:14 12 you in your review

10:36:16 13 A. Wait a minute. I don't recall this particular

10:36:17 14 one.

10:36:18 15 Q. All right. So we start with Exhibit 1868, and

10:36:21 16 I think you'll see that they go in sequence in terms of

10:36:24 17 time from that point forward. So why don't you just take

10:36:26 18 a minute to look those over, and then I'll ask you a few

10:36:30 19 questions about the sequence.

10:37:26 20 A. You want me to review all of these, yes?

10:37:29 21 Q. Yes. I think that will make the questioning go

10:37:31 22 easier.

10:37:48 23 A. Okay.

10:37:48 24 Q. All right. So let's start with Exhibit 1868,

10:37:51 25 and let me say, to orientate you, this is the ones we

10:37:56 1 looked at a moment ago were on Sunday and Monday, if the
10:38:01 2 dates and times are to be accepted, that those were the
10:38:03 3 first two.

10:38:04 4 A. Uh huh.

10:38:05 5 Q. And now we've moved to Thursday of that week.
10:38:07 6 And Mr. Campbell writes to you with a copy to Mr. Page,
10:38:11 7 saying, "Steve," meaning Steve Jobs, "just called me
10:38:13 8 again, and he's pissed that we are still recruiting his
10:38:17 9 browser guy. You should give him a call."

10:38:18 10 Do you see that?

10:38:19 11 A. Yeah, it looks like the Valentine's love wore
10:38:23 12 off.

10:38:23 13 Q. I would say so.

10:38:24 14 And then if you go to Exhibit 1869, Mr. Page
10:38:27 15 appears to have responded to Mr. Campbell's email a few
10:38:32 16 minutes after receiving it saying, "He called a few
10:38:35 17 minutes ago and demanded to talk to me. Where are we
10:38:39 18 with the candidate?"

10:38:40 19 Do you see that?

10:38:41 20 A. I do see that.

10:38:42 21 Q. It would appear, at least as I interpret this,
10:38:44 22 that the "he called" is a reference to Mr. Jobs.

10:38:47 23 A. I would assume so.

10:38:49 24 Q. All right. And then if you go to the next
10:38:51 25 exhibit in order, Exhibit 1870, Larry again, this is

10:38:55 1 just a couple of minutes later, again, if the time stamps
10:38:59 2 are to be believed, saying, "Sergey is going to call him
10:39:06 3 now." Right?

10:39:08 4 A. Uh huh.

10:39:08 5 Q. Again, you have to say "yes" or "no" or

10:39:10 6 A. Sorry. Yes, I see that.

10:39:12 7 Q. Then if we go to Exhibit 1871, this is an email
10:39:15 8 from you, again again on the 17th, this time
10:39:22 9 apparently around 8:20, and you're writing to the EMG and
10:39:26 10 to Joan and to Bill Campbell and to Arnnon as well,
10:39:31 11 right?

10:39:33 12 A. Correct.

10:39:34 13 Q. So you say in this email, "So I got another
10:39:37 14 irate call from Jobs today. I don't think we should let
10:39:40 15 that determine our hiring strategy, but thought I would
10:39:43 16 let you know. Basically he said, 'if you hire a single
10:39:48 17 one of these people, that means war.' I said I could not
10:39:52 18 promise any outcome, but I would discuss it with the
10:39:54 19 executive team again. I asked if he expected us to
10:39:58 20 withdraw offers, and he said, yes."

10:40:01 21 And then the email continues on, closing with,
10:40:07 22 "In any case, let's not make any new offers or contact
10:40:11 23 new people at Apple until we have had a chance to
10:40:13 24 discuss."

10:40:14 25 Do you see that?

10:40:14 1 A. I do.

10:40:15 2 Q. Now, once again, the question is, do you have
10:40:17 3 any recollection of the conversation or conversations
10:40:19 4 that you had with your executive team and Mr. Campbell
10:40:24 5 about this as reflected here?

10:40:27 6 A. I mean my recollection is pretty much spurred
10:40:31 7 by the email, and, you know, roughly extends to the
10:40:34 8 email. I mean this all looks correct.

10:40:39 9 Q. But where I left off was you said you were
10:40:42 10 going to talk about it with your folks at the
10:40:46 11 executive folks at Google.

10:40:48 12 A. Oh.

10:40:48 13 Q. So my question is whether or not you have any
10:40:50 14 recollection of those conversations

10:40:52 15 A. Oh, the subsequent conversations? I I mean
10:40:58 16 I'm pretty sure that we later discussed it.

10:41:02 17 Q. But that's the extent of what you can say about
10:41:04 18 it; is that fair?

10:41:05 19 A. Yeah. I think that yes. Yes. I I
10:41:09 20 can't I mean, once again, in preparation I reviewed
10:41:13 21 the various emails from this period and subsequent, so I
10:41:17 22 feel like I generally generally have read emails about
10:41:25 23 it, but that's about the extent of the recollection.

10:41:27 24 MR. HEIMANN: All right. Let's have a look at
10:41:29 25 Exhibit 1872.

10:41:29 1 (Exhibit 1872 was marked for identification.)

10:41:35 2 MR. HEIMANN: This is another one in this same
10:41:37 3 sequence.

10:41:40 4 MR. RUBIN: Thank you.

10:42:12 5 BY MR. HEIMANN:

10:42:12 6 Q. To put this in context, you'll see this email
10:42:15 7 begins with the Bill Campbell email we looked at a moment
10:42:18 8 ago and Larry Page's response. It should be on the
10:42:23 9 backside of that document that you're looking at.

10:42:35 10 A. Okay. What, out of curiosity, is the
10:42:43 11 significance of the redactions?

10:42:45 12 Q. Well, that is a good question. I don't know
10:42:47 13 why it is redacted, and it is not helpful, because it is
10:42:50 14 a person's name, and I think if you knew the name it
10:42:53 15 might help you to recall what this topic this
10:42:55 16 discussion is about. But your counsel have redacted it.
10:42:58 17 So I can't help us there.

10:43:00 18 MR. RUBIN: Well, I'll just represent these
10:43:01 19 were privacy redactions that were specifically provided
10:43:05 20 for in the Protective Order.

10:43:06 21 MR. HEIMANN: All right. I don't quarrel with
10:43:08 22 you, but can you tell him who it is so he at least has
10:43:10 23 the benefit of

10:43:10 24 THE WITNESS: I think I know who it is.

10:43:11 25 MR. RUBIN: I certainly think one of them is a

10:43:14 1 fellow Mr. Brin mentioned, [REDACTED], and I think we
10:43:18 2 have another email that mentions a couple of other names
10:43:20 3 that were produced, so I think we can find those in other
10:43:25 4 emails.

10:43:25 5 MR. HEIMANN: That is right. And that is one
10:43:27 6 of the questions I question why you've got it redacted
10:43:29 7 here, because the name does appear in other emails and it
10:43:31 8 just confuses matters to have it redacted in this email.

10:43:34 9 MR. RUBIN: I was just indicating that that was
10:43:36 10 the intent, was to protect privacy of third parties.
10:43:37 11 That was the only intention that was provided for in the
10:43:37 12 Protective Order. Whether every Google reviewer did it
10:43:42 13 consistently, obviously there have been inconsistencies,
10:43:46 14 but that was the intention.

10:43:47 15 THE WITNESS: Okay. Yes, I have reviewed this.

10:44:00 16 BY MR. HEIMANN:

10:44:01 17 Q. All right. Does that help refresh your
10:44:02 18 recollection to any extent about conversations at the
10:44:05 19 time?

10:44:05 20 A. I mean, yes, in the sense that I you know, I
10:44:08 21 read the emails and I certainly believe that, and that's,
10:44:10 22 you know, pretty much the extent of my recollection. I
10:44:12 23 am not sure I remember much beyond these.

10:44:16 24 Q. Well, first of all, who is the who is the
10:44:18 25 gentleman whose name is redacted there? Do you know?

10:44:20 1 A. I believe by the way, I'm not positive every
10:44:24 2 single word redacted is the same person, but one person
10:44:27 3 who is very important here is probably, you know fills
10:44:30 4 in some of these blanks, is [REDACTED].

10:44:33 5 Q. All right. Why don't we take a look at
10:44:34 6 Exhibit 199 while we're here.

10:44:59 7 Now, this is an email that you don't appear to
10:45:00 8 have been copied on, but you'll see that it was sent by
10:45:03 9 Mr. Campbell to Mr. Jobs the day after, if the dates are
10:45:08 10 correct, the exchange we were looking at with respect to
10:45:10 11 the exchange that you were involved in took place.

10:45:23 12 A. It looks like this is on the Friday.

10:45:24 13 Q. Right. So Campbell writes to Jobs, "I am
10:45:26 14 heading out of town and wanted to give you the latest of
10:45:29 15 what I heard from Google after talking to Eric Schmidt.
10:45:33 16 Eric told me that he got directly involved and firmly
10:45:36 17 stopped all efforts to recruit anyone from Apple.
10:45:38 18 Unfortunately (and you will be rightfully pissed), they
10:45:42 19 had already extended an offer to Dave. When I talked to
10:45:46 20 Eric, he simply felt that he could not rescind the offer,
10:45:50 21 but felt it was doubtful that Dave would take the offer
10:45:51 22 since Google stopped recruiting the other members of his
10:45:53 23 team."

10:45:54 24 Let me stop there.

10:45:55 25 Does that help refresh your memory at all as to

10:46:02 1 the conversations?

10:46:03 2 A. Not really. I mean I I'm actually not
10:46:19 3 even sure when we subsequently discussed this. Because
10:46:25 4 this happened on Thursday, late. This is Friday. I'm
10:46:29 5 not sure we actually sort of talked about it between
10:46:33 6 those two. Maybe we did. An actual time might have been
10:46:38 7 the subsequent Monday. I'm kind of speculating. But it
10:46:41 8 looks if I believe this, at least Eric made a you
10:46:44 9 know, a you know, at least some kind of had a
10:46:50 10 conversation with Bill to relate to Steve to calm him
10:46:53 11 down.

10:46:54 12 Anyway, no, I'm not sure what exactly
10:46:56 13 discussion happened between those two dates.

10:47:02 14 Q. Can you tell us whether or not in the
10:47:03 15 conversations that you had with Mr. Jobs during this
10:47:05 16 sequence you agreed on behalf of Google that Google would
10:47:10 17 not cold call Apple employees, and he, Jobs, agreed on
10:47:15 18 behalf of Apple that Apple would not cold call Google
10:47:19 19 employees?

10:47:20 20 MR. RUBIN: Objection to form.

10:47:21 21 THE WITNESS: No. I don't believe that that
10:47:22 22 was said.

10:47:25 23 BY MR. HEIMANN:

10:47:25 24 Q. Why do you

10:47:26 25 A. In fact, if you read Exhibit 1871, and I assume

11:13:09 1 MR. BULLOCK: Objection. Form.

11:13:10 2 A. To my knowledge, no.

11:13:12 3 Q. Do you have any actual knowledge or
11:13:14 4 specific knowledge about whether or not other
11:13:16 5 companies had agreements with Google not to cold
11:13:19 6 call their employees?

11:13:20 7 MR. BULLOCK: Objection. Form.

11:13:22 8 Q. Not to cold call Google's employees?

11:13:26 9 MR. BULLOCK: Objection. Form.

11:13:27 10 A. I have no idea.

11:13:28 11 Q. You said before that Google didn't
11:13:30 12 I'll use your words when you said before that
11:13:47 13 Google never asked for that type of policy, do you
11:13:50 14 have any basis for that statement?

11:13:53 15 MR. BULLOCK: Objection. Form.

11:14:00 16 A. I can't say I'm privy to all executive
11:14:03 17 decisions at Google, but I'm reasonably sure that
11:14:14 18 Google never expected nor asked for any of that.

11:14:19 19 I can't say that other companies didn't
11:14:20 20 have similar policies, if Google was a partner of
11:14:23 21 theirs, not to recruit from Google. Maybe they did,
11:14:26 22 but I don't know.

11:14:28 23 Q. But I'm asking what is the basis for your
11:14:30 24 certainty that Google didn't ask anybody?

11:14:36 25 A. I guess I wouldn't call it certainty.

10:56:33 1 Q. So she's writing in April of 2005. So two
10:56:37 2 months or so after the February exchange, and she is
10:56:39 3 saying, "Arnnon, I've kept in touch with" redacted
10:56:42 4 "from the Safari team at Apple." I'm sure that is Dave
10:56:46 5 that we've been talking about in the context here.
10:56:48 6 Right? Do you agree?

10:56:52 7 A. I'm guessing it is. Yes.

10:56:56 8 Q. She says, "I have kept in touch with"
10:56:58 9 redacted "from the Safari team at Apple. As you
10:57:01 10 recall, we offered him a position to which Steve Jobs
10:57:04 11 countered (and called Sergey see thread below)."

10:57:11 12 A. Yes.

10:57:12 13 Q. And he says, "I think Dave will" dropping
10:57:14 14 down to the middle of the next paragraph, "I think Dave
10:57:14 15 will come and wanted to consider giving him another offer
10:57:18 16 that evening," et cetera.

10:57:19 17 Do you see that?

10:57:20 18 A. Yes.

10:57:20 19 Q. Now, if we move up to what I take it to be
10:57:27 20 Geshuri writing to Bill how do you say it again?

10:57:33 21 A. Bill Coughran.

10:57:34 22 Q. Coughran.

10:57:36 23 A. Uh huh.

10:57:36 24 Q. And Geshuri who was he again? I'm sorry.

10:57:36 25 A. Arnnon Geshuri, he was one of the high level

10:57:38 1 execs in the HR.

10:57:44 2 Q. On the EMG, right?

10:57:46 3 A. No. No. He would not have been on the EMG.

10:57:48 4 Q. All right. He writes, "I wanted to get your

10:57:50 5 take on this." Blank "is reaching out to us and we feel

10:57:55 6 that we not be in violation of our agreement with Apple

10:57:59 7 which states that we would not directly cold call into

10:58:02 8 the company, but would accept direct solicitation and/or

10:58:08 9 interest from a candidate."

10:58:10 10 Do you see that?

10:58:11 11 A. I do see that.

10:58:12 12 Q. How do you square your understanding as you

10:58:14 13 described it with what Mr. Geshuri is talking about with

10:58:16 14 respect to an agreement with Apple not to directly cold

10:58:20 15 call into the company?

10:58:22 16 MR. RUBIN: Objection. Form.

10:58:23 17 THE WITNESS: Yeah. I mean, look, I don't

10:58:24 18 think that Arnnon writing that email eight years ago was

10:58:30 19 very thoughtful about his choice of language.

10:58:32 20 BY MR. HEIMANN:

10:58:33 21 Q. So you think he was just mistaken.

10:58:34 22 A. I mean, I think we had made a decision not to

10:58:36 23 do that with respect to Apple. He's calling it an

10:58:39 24 agreement. I mean I think we told I think we relayed

10:58:42 25 to Steve, look, chill out. We're not going to call in.

10:58:45 1 But I wouldn't consider it an agreement. There was no,
10:58:50 2 like, real tit for tat that was meaningful to us is any
10:58:53 3 way.

10:58:54 4 Q. And do you have an explanation for how
10:58:57 5 Mr. Geshuri came to the understanding that it was an
10:58:59 6 agreement with Apple?

10:59:01 7 MR. RUBIN: Objection to form.

10:59:02 8 THE WITNESS: I am sure there are a lot of ways
10:59:04 9 he could have misunderstood. I mean, for example, it was
10:59:07 10 our internal agreement to make that decision. I just
10:59:10 11 don't think he was that careful with his choice of
10:59:13 12 prepositions and whatnot.

10:59:14 13 BY MR. HEIMANN:

10:59:14 14 Q. So you just think he was just mistaken when he
10:59:16 15 says, "agreement with Apple which states," et cetera?

10:59:19 16 MR. RUBIN: Objection. Form.

10:59:20 17 THE WITNESS: Look, I think my understanding,
10:59:25 18 you know, from what I recall back then, is that, you
10:59:29 19 know, we decided, look, it's not worth agitating Steve.
10:59:32 20 We're just going to commit not to do this. It's not,
10:59:37 21 like, a contractual agreement or anything. You know, we
10:59:40 22 could change our mind the next day.

10:59:41 23 BY MR. HEIMANN:

10:59:42 24 Q. Well, I keep I want to focus on that. I'm
10:59:44 25 sorry. When you say it wasn't a contractual agreement,

10:59:48 1 are you are you saying in order for there to be an
10:59:51 2 agreement in your mind it had to be contractual that you
10:59:54 3 were bound by?

10:59:56 4 MR. RUBIN: Objection to form.

10:59:57 5 THE WITNESS: I'm saying that we felt that to
11:00:00 6 maintain our relationship with Steve and Apple it was
11:00:03 7 worth it not to agitate him by, as you put it, "cold
11:00:07 8 calling" into Apple, and therefore we said, like, we
11:00:11 9 won't do that. I don't think that constitutes an
11:00:16 10 agreement.

11:00:17 11 MR. HEIMANN: Okay. We can take a break.

11:00:19 12 MR. RUBIN: Thanks.

11:00:23 13 THE VIDEOGRAPHER: We are now off the record at
11:00:24 14 12:00 o'clock.

11:17:42 15 (Recess was taken.)

11:18:14 16 THE VIDEOGRAPHER: We are now on the record at
11:18:15 17 12:18.

11:18:16 18 BY MR. HEIMANN:

11:18:19 19 Q. Sir, I've put before you Exhibit 563, which is
11:18:24 20 an email internal to Apple that you don't appear on, nor
11:18:31 21 does anybody else from Google, as far as I can tell. But
11:18:34 22 you'll notice the date is February 26th of 2005.

11:18:42 23 A. Yeah.

11:18:43 24 Q. Do you happen to know who Danielle Lambert or
11:18:46 25 Lambert is, or was at the time?

11:18:50 1 A. No, but I imagine it's pronounced Danielle.

11:18:53 2 Q. I think you're right.

11:18:55 3 You'll see that she writes to

11:18:58 4 usrecruiting@group.apple.com. Do you see that?

11:19:04 5 A. Yeah.

11:19:04 6 Q. And she writes in part, "Please add Google to

11:19:07 7 our 'hands off' list. We recently agreed not to recruit

11:19:13 8 from one another, so if you hear of any recruiting they

11:19:17 9 are doing against us, please be sure to let me know.

11:19:20 10 Please also be sure to honor our side of the deal."

11:19:23 11 Do you see that?

11:19:25 12 A. Uh huh.

11:19:25 13 Q. Do you have any you have to say "yes" or

11:19:27 14 "no."

11:19:28 15 A. Yes. I see that.

11:19:29 16 Q. Do you have any explanation for how it was that

11:19:31 17 Apple apparently was of the view and understanding that

11:19:34 18 an agreement had been reached between Google and Apple as

11:19:37 19 described here?

11:19:39 20 MR. RUBIN: Objection. Form.

11:19:40 21 THE WITNESS: I mean I think I'd really have to

11:19:42 22 speculate, you know?

11:19:45 23 BY MR. HEIMANN:

11:19:45 24 Q. Feel free.

11:19:47 25 MR. RUBIN: Objection. Form.

11:19:51 1 THE WITNESS: You know, I think I would guess
11:19:52 2 that, you know, we did tell Steve that, you know, we
11:19:55 3 weren't going to sort of solicit out of Apple. It is not
11:20:00 4 to say we wouldn't recruit people who came to us from
11:20:03 5 Apple or referred through any number of things. But I
11:20:07 6 think, you know I don't know, he probably felt that it
11:20:14 7 would be a big deal to us if they do the same or
11:20:16 8 something like that.

11:20:18 9 I don't think it would be a big deal to us, you
11:20:22 10 know. I don't I I can't imagine in 2005 we would
11:20:27 11 have had any meaningful number of people who would have
11:20:30 12 left Google for Apple or referred in any ways at all,
11:20:35 13 and even to date, I I mean I don't know of any
11:20:39 14 any individual examples of something like that.

11:20:44 15 BY MR. HEIMANN:

11:20:45 16 Q. When you use the term "meaningful number," what
11:20:48 17 do you mean?

11:20:51 18 A. I would guess that there are probably, you
11:20:53 19 know, somewhere between zero and, I don't know, five
11:20:58 20 people. I if I had to guess one number, I bet there
11:21:01 21 would have been no people who had left Google for Apple,
11:21:06 22 certainly not as a result of just a call from somebody
11:21:09 23 from Apple.

11:21:10 24 It is possible there were one or two. I never
11:21:12 25 heard of such an example, and, you know, looking forward

11:21:15 1 now, it's possible there might have been a handful, but
11:21:18 2 I'm not aware of any examples.

11:21:32 3 Q. Was Google's board of directors informed of the
11:21:38 4 communications with Jobs at Apple about this topic?

11:21:44 5 A. My recollection, which was refreshed based on
11:21:49 6 looking at emails recently, is that we decided, you know,
11:21:53 7 in order not to, you know, agitate Steve further, that we
11:21:58 8 wouldn't make such unsolicited calls into his into
11:22:03 9 Apple's employees.

11:22:04 10 We felt that we should think, you know, are
11:22:05 11 there other companies where we also don't wish to, you
11:22:09 12 know, needlessly aggravate the executives, and I believe
11:22:12 13 that Genentech was an example, and Art Levinson was on
11:22:18 14 our board, and so was Intel, and Paul Otellini was on our
11:22:23 15 board. So I'm sure that we would have mentioned it to at
11:22:29 16 least those board members, probably might as well the
11:22:32 17 whole board.

11:22:33 18 Q. Did the board of directors approve the policy?

11:22:38 19 A. I don't recall there being, you know, sort of
11:22:42 20 any kind of official approval by the board.

11:22:47 21 Q. You say "official approval." I didn't ask
11:22:50 22 about official approval. I asked about approval.

11:22:52 23 A. I don't recall

11:22:53 24 MR. RUBIN: Objection to form.

11:22:54 25 THE WITNESS: I don't recall a board approval.

11:22:56 1 BY MR. HEIMANN:

11:23:07 2 Q. All right. Let's take a look at Exhibit 640.

11:23:34 3 By the way, you mentioned Intel and Genentech a
11:23:38 4 moment ago.

11:23:39 5 A. Correct.

11:23:40 6 Q. Was the arrangement over recruiting reciprocal
11:23:44 7 with those two companies?

11:23:45 8 MR. RUBIN: Objection. Form.

11:23:51 9 THE WITNESS: Yeah, first the arrangement.

11:23:52 10 BY MR. HEIMANN:

11:23:52 11 Q. I'm sorry to interrupt you. I'm trying to
11:23:55 12 search for a neutral term we can use.

11:23:57 13 A. I mean I think that I don't think it would
11:23:58 14 have mattered to us whether they, you know, recruited
11:24:03 15 directly, whether they would recruit directly out of
11:24:06 16 Google or solicit. I don't think it would have mattered
11:24:12 17 to us one way or the other.

11:24:14 18 Q. All right. Whether it would have mattered or
11:24:16 19 not, was the understanding reciprocal with let's start
11:24:19 20 with Intel.

11:24:21 21 MR. RUBIN: Objection. Form.

11:24:22 22 THE WITNESS: I I don't recall. If it had
11:24:26 23 been reciprocal, it would have been just as a matter of
11:24:29 24 politeness.

25 //

11:31:09 1 original document, "Google Staffing, Attorney Client
11:31:13 2 Privileged and Confidential." That's at the bottom of
11:31:17 3 the first page.

11:31:18 4 A. Yes.

11:31:18 5 Q. Okay. So whether or not any of that helps, can
11:31:20 6 you tell us whether you know what this thing is?

11:31:26 7 A. I I I'm not sure. I mean it looks
11:31:28 8 like I mean it is sort of a mishmash of stuff all
11:31:36 9 stapled together. And there is a summary on the first
11:31:39 10 page. Maybe it was like a report produced.

11:31:44 11 Anyway, I don't recall what it is.

11:31:46 12 Q. All right. Fair enough. If we go to the last
11:31:50 13 page, and that appears to be subtitled, "Special
11:31:53 14 Agreements, Protocols, and Proposed Amendments."

11:31:56 15 Do you see that?

11:31:57 16 A. Uh huh.

11:31:57 17 Q. And it begins, "We have an existing set of
11:31:59 18 special agreements and protocols that establish controls
11:32:02 19 over recruiting efforts and staffing activity."

11:32:07 20 It goes on, "Number one, we have established a
11:32:10 21 special protocol as agreed to by the board with three
11:32:13 22 companies, Genentech, Intel, and Apple," and it specifies
11:32:17 23 that Google cannot directly cold call into those
11:32:21 24 companies as a part of the recruiting effort.

11:32:22 25 Do you see that?

11:32:23 1 A. I do see that.

11:32:24 2 Q. Does that assist you at all in telling us
11:32:26 3 whether or not the board of directors approved was
11:32:27 4 informed of and approved of the special agreements?

11:32:32 5 MR. RUBIN: Objection. Form.

11:32:34 6 THE WITNESS: Look, I mean I see what this
11:32:35 7 document says, I don't I'm not sure who authored this
11:32:40 8 document or when or why or you know. I I don't
11:32:45 9 have a recollection of the board, you know, making any
11:32:48 10 kind of decision or agreement with respect to this issue,
11:32:53 11 so yeah.

11:33:01 12 BY MR. HEIMANN:

11:33:01 13 Q. Okay. Did the whether you call it protocol
11:33:06 14 or agreement, with respect to each of these three
11:33:09 15 companies, was it company wide?

11:33:13 16 A. Was it company wide with respect to them?

11:33:16 17 Q. Yes.

11:33:16 18 A. Or us?

11:33:17 19 Q. No, them.

11:33:20 20 A. Hmm. That's a great question. You know, I
11:33:26 21 I think usually when we look at things like this, we're
11:33:29 22 thinking about typically technical or notable positions.
11:33:35 23 I don't know that I don't know if this, like,
11:33:44 24 contemplated the whatever, janitors or something.

11:33:48 25 Q. So the answer is, you don't know the answer to

11:33:50 1 the question.

11:33:51 2 A. Correct.

11:33:51 3 Q. Did it include the subsidiaries of these three
11:33:54 4 companies, to the extent there were subsidiaries?

11:33:57 5 A. I I mean, one, I don't know, but, two, I
11:34:01 6 don't think it's that I just that I don't know, I just
11:34:04 7 don't think it was thought through so carefully.

11:34:09 8 Q. How about geographically? Were there any
11:34:11 9 geographic limits?

11:34:12 10 A. Were there any geographic limits? I don't
11:34:17 11 recall any geographic limits.

11:34:20 12 Q. Any time limits?

11:34:29 13 A. Once again, you know, I view it as, you know,
11:34:31 14 just something we decided to do, but at any given time we
11:34:34 15 could have changed our mind. We probably would have
11:34:38 16 given them a heads up, like, sorry, you know, it's we
11:34:42 17 feel like we want to solicit directly out of these
11:34:44 18 companies. So I believe there is no time limit, simply a
11:34:50 19 commitment that we make for the time being, until we
11:34:52 20 change our mind.

11:34:53 21 Q. Any limitations in terms of job title or
11:34:55 22 descriptions of the employees to which it applied?

11:35:02 23 A. Once again, I I don't think that this was
11:35:04 24 there is no, like, draft or anything. I know you're
11:35:08 25 really focused on the word "agreement" or whatnot. I

11:35:13 1 think this was a pretty informal commitment, and I don't
11:35:16 2 think it was thought through so carefully.

11:35:19 3 Q. Was it enforced?

11:35:21 4 A. Was it enforced?

11:35:23 5 Q. At Google? Did Google enforce it?

11:35:25 6 MR. RUBIN: Objection. Form.

11:35:28 7 THE WITNESS: I'm I'm not aware of us, you
11:35:35 8 know, cold calling into those companies, at least during
11:35:40 9 roughly that period of time. But I can't swear that it
11:35:44 10 didn't happen.

11:35:44 11 BY MR. HEIMANN:

11:35:45 12 Q. Do you know whether or not Google enforced the
11:35:48 13 understanding or policy, whatever you call it?

11:35:52 14 A. Do you mean, like, did we discipline recruiters
11:35:56 15 if they violated it?

11:35:58 16 Q. That would be one way of enforcing it, yes, I
11:36:01 17 suppose.

11:36:01 18 A. I don't know. I mean, I don't like I said,
11:36:06 19 I'm not I can't recall a situation where we, you know,
11:36:10 20 did not honor that commitment, but it's possible it
11:36:13 21 happened.

11:36:13 22 Q. All right. Did did the did Google expand
11:36:16 23 the commitment beyond these three companies at any point?

11:36:22 24 MR. RUBIN: Objection. Form.

11:36:24 25 THE WITNESS: Once again, I this is all from

11:36:27 1 my reading this particular document, and I can't swear to
11:36:30 2 what I actually recall happening or not.

11:36:32 3 I remember we were at least careful for some
11:36:36 4 other companies. It is not that we wouldn't recruit out
11:36:38 5 of them, but we were a little bit more thoughtful about a
11:36:41 6 larger set at some point in the future.

11:36:44 7 BY MR. HEIMANN:

11:36:45 8 Q. At what point?

11:36:48 9 A. Well, if I'm to believe the date on this
11:36:50 10 document, which is in September 2005, this includes a
11:36:53 11 proposal to discuss other companies. Though quite
11:37:00 12 frankly, I just don't recall the exact details of our
11:37:03 13 treatment of all these companies.

11:37:22 14 Q. Exhibit 180.

11:37:30 15 A. I'm sorry. Is this one I already have
11:37:31 16 somewhere?

11:37:32 17 Q. No, no, a new one. I think you can probably
11:37:33 18 put aside the pile that you've got there.

11:37:37 19 A. Okay.

11:37:37 20 Q. Who knows, I may have to come back to it.

11:37:39 21 A. Okay, we can build a small house with it or
11:37:42 22 something.

11:37:43 23 Q. All right. So this is an email exchange in
11:37:45 24 October, just to orientate you, in 2005. The document we
11:37:49 25 were just look asking at, I think, was September 2005.

11:47:59 1 MR. HEIMANN: Why don't we let Mr. Brin have
11:48:02 2 Exhibit 1875 at the same time.

11:48:45 3 THE WITNESS: Okay.

11:48:45 4 BY MR. HEIMANN:

11:48:46 5 Q. Have you had a chance I gave you two there
11:48:48 6 at once, right? They are related.

11:48:50 7 A. Yeah, I mean it looks like yeah, it looks
11:48:53 8 like roughly the same thread. In one case, Eric replied
11:48:57 9 to Steve Jobs, in another case he forwarded the complaint
11:49:00 10 to maybe Shona, who then forwarded it on or something
11:49:06 11 like that.

11:49:07 12 Q. So the question is this. I had asked you
11:49:09 13 earlier about whether or not Google enforced the policy,
11:49:14 14 and with respect to these documents, these appear to be
11:49:20 15 instances this appears to be at least an instance in
11:49:22 16 which Mr. Jobs complained about what he thought was
11:49:24 17 recruiting going on on Google's part among Apple, or
11:49:28 18 Apple employees, right?

11:49:30 19 A. That's what it appears to be, yes.

11:49:32 20 Q. So the question is, were you made aware of
11:49:34 21 these kinds of complaints when they came in?

11:49:37 22 A. Well, I am on the cc line of this particular
11:49:42 23 email, so, you know, I don't really recall it, to be
11:49:46 24 honest with you, nor have a recollection of it at all.
11:49:50 25 But somebody thought to copy me, it looks like.

11:49:55 1 Q. Yes, I see that.

11:49:56 2 A. Yeah.

11:49:57 3 Q. But I'm gathering from your answer that you

11:49:58 4 don't really recall this at all.

11:50:00 5 A. No, sorry.

11:50:44 6 Q. Exhibit 192 and Exhibit 250 together.

11:51:29 7 A. Wow, Steve used a smiley. God, I never got one

11:51:32 8 of those.

11:53:30 9 Q. Okay?

11:53:31 10 A. Yes.

11:53:31 11 Q. Let's start with Exhibit 192. This appears to

11:53:35 12 begin with an email from Stephanie Buran at Google to

11:53:48 13 folks, or a person at Apple.

11:53:50 14 A. That is what it appears to be.

11:53:52 15 Q. And that email is forwarded by Mr. Jobs to

11:53:55 16 Mr. Schmidt on March 7, 2007, with the statement, "I

11:54:00 17 would be very pleased if your recruiting department would

11:54:03 18 stop doing this."

11:54:04 19 A. Correct.

11:54:05 20 Q. All right. And Mr. Schmidt responds

11:54:08 21 internally, initially, to that email by saying, "I

11:54:12 22 believe we have a policy of no recruiting, and this is a

11:54:16 23 direct inbound request," et cetera.

11:54:19 24 Do you see that?

11:54:20 25 A. Yes.

11:54:20 1 Q. And then if I'm reading

11:54:26 2 A. I see how he uses the word "policy."

11:54:29 3 Q. Pardon me?

11:54:30 4 A. I see how he uses the word "policy."

11:54:33 5 Q. He does?

11:54:33 6 A. Yes.

11:54:34 7 Q. We will come to other documents that use

11:54:37 8 different terms in a minute.

11:54:38 9 MR. RUBIN: There is no question.

11:54:40 10 THE WITNESS: Okay.

11:54:40 11 BY MR. HEIMANN:

11:54:41 12 Q. And it appears to me that Mr. Geshuri, in

11:54:47 13 responding to Mr. Schmidt, says, "On this specific case

11:54:51 14 the sourcer who contacted this Apple employee should not

11:54:54 15 have, and will be terminated within the hour. In general

11:54:58 16 we have a very clear 'do not call' policy, attached, that

11:55:02 17 is given to every staffing professional," et cetera.

11:55:05 18 Do you see that?

11:55:06 19 A. Yes, I see that.

11:55:08 20 Q. First of all, do you again, do you have any

11:55:11 21 recollection of being made aware of Google enforcing the

11:55:15 22 policy of no cold calling by, in this case, terminating

11:55:21 23 Google employees who engaged in it?

11:55:24 24 MR. RUBIN: Objection. Form.

11:55:25 25 THE WITNESS: I I don't have a recollection

13:03:12 1 about the agreements between Apple and Google on this
13:03:14 2 subject than you did.

13:03:16 3 MR. RUBIN: Objection to form.

13:03:17 4 THE WITNESS: But once again, you are
13:03:18 5 presupposing there was an agreement. In your question
13:03:20 6 you are presupposing the answer you want to hear.

13:03:23 7 BY MR. HEIMANN:

13:03:23 8 Q. Well, the question that I originally posed to
13:03:25 9 you

13:03:25 10 A. Yeah.

13:03:25 11 Q. is, is it your view that he knew more about
13:03:28 12 the existence or non existence of agreements relating to
13:03:31 13 recruiting than you did.

13:03:33 14 A. I'm telling you

13:03:33 15 MR. RUBIN: Just let me objection to form.

13:03:35 16 THE WITNESS: I'm telling you this has nothing
13:03:36 17 to do with agreements, nonagreements, things like that.
13:03:40 18 It's about Steve's ego and emotions.

13:03:44 19 BY MR. HEIMANN:

13:03:44 20 Q. What is about Steve's ego and emotions?

13:03:47 21 A. Alan just didn't want to agitate and piss off
13:03:50 22 Steve needlessly.

13:03:52 23 Q. And how does that explain Mr. or

13:03:57 24 [REDACTED]'s understanding that a gentleman agreement
13:04:00 25 existed between Google and Apple regarding recruiting

13:04:03 1 employees or hiring employees from each other?

13:04:06 2 A. I'm sure that Alan expressed some of the
13:04:09 3 sensitivity and to [REDACTED] about Google hiring
13:04:17 4 people close to Steve and people Steve might care about,
13:04:20 5 and I don't know. Who knows how Alan conveyed that and
13:04:25 6 what [REDACTED] took away from that? I wouldn't want to
13:04:31 7 speculate.

13:04:31 8 Q. All right. But in any event, you didn't take
13:04:34 9 any steps to correct any misimpressions when you received
13:04:36 10 this email.

13:04:38 11 MR. RUBIN: Objection. Form.

13:04:41 12 THE WITNESS: No. I mean I wouldn't I don't
13:04:43 13 think I ever even interacted directly with [REDACTED] in
13:04:47 14 any way.

13:04:47 15 BY MR. HEIMANN:

13:04:48 16 Q. Okay. Did did you have an understanding of
13:04:52 17 Mr. Jobs' view about how Silicon Valley companies should
13:04:58 18 interact with each other with respect to hiring away
13:05:02 19 other companies' employees?

13:05:04 20 MR. RUBIN: Objection. Form.

13:05:06 21 THE WITNESS: I think Mr. Jobs' view was that
13:05:09 22 people shouldn't piss him off. And I think that things
13:05:14 23 that pissed him off were would be hiring, you know
13:05:19 24 whatever. Certain people that he deemed important at the
13:05:21 25 time or close to him or knew or, you know, who knows what

13:05:27 1 would trip his emotions exactly, but I think this
13:05:31 2 situation of [REDACTED] specifically is because he was
13:05:34 3 close to [REDACTED] in some way. I don't personally know
13:05:37 4 their history, but I believe they were friends or
13:05:39 5 something.

13:05:39 6 BY MR. HEIMANN:

13:05:40 7 Q. Well, didn't you have an understanding that
13:05:41 8 Mr. Jobs' view was that no one in Silicon Valley should
13:05:44 9 be trying to hire away employees of Apple from Apple?

13:05:49 10 A. I'm sure that he wished that that was the case.
13:05:52 11 I don't think he was even that unreasonable. But, yeah,
13:05:57 12 I mean I think there were certain times and certain
13:06:00 13 employees and solicitations at Apple.

13:06:12 14 Q. Let's take a look at Exhibit 861. This is an
13:06:26 15 email from June of 2006 that, as near as I can tell, is
13:06:29 16 internal to Apple. I want to focus your attention on the
13:06:33 17 last paragraph of the email from Danielle Lambert or
13:06:46 18 "Lambert" to Steve Jobs.

13:07:15 19 A. Okay. I see it.

13:07:16 20 Q. In this email the author wrote to Mr. Jobs, "We
13:07:19 21 have been diving into the search for someone to lead an
13:07:23 22 ad sales team and surfacing some good folks. We are
13:07:26 23 researching Google to see who is there, and learn what we
13:07:30 24 can about their backgrounds, but are not directly calling
13:07:33 25 them directly, given the agreement you and Sergey struck

13:07:38 1 not to recruit from one another. We are tapping into the
13:07:41 2 other companies first to avoid having to go there. Do
13:07:46 3 you agree with that approach?"

13:07:49 4 Can you explain how the folks at Apple
13:07:55 5 understood that you had reached an agreement with
13:07:57 6 Mr. Jobs not to recruit from one another in light of your
13:08:00 7 testimony that there wasn't any such agreement?

13:08:03 8 MR. RUBIN: Objection. Form.

13:08:04 9 THE WITNESS: Yeah. I mean I disagree with
13:08:05 10 your conclusion. I mean first of all this says, "Do you
13:08:08 11 agree with that approach," implying that is not actually
13:08:12 12 a hard fact.

13:08:14 13 Secondly, I think you're delving in I don't
13:08:20 14 know Danielle Lambert, but I don't I think this is,
13:08:23 15 like, third hand, fourth hand, and you're looking at
13:08:27 16 words in the long run on sentence that, who knows English
13:08:32 17 is her native language, but

13:08:36 18 I don't I think this is like, you know,
13:08:43 19 Steve probably told her at some point that, like, oh,
13:08:46 20 Sergey and I chatted and he told me, you know, that they
13:08:49 21 won't be calling in to us, and therefore we shouldn't be
13:08:52 22 calling into them. Maybe that soothed his ego. We were
13:08:56 23 never concerned about it.

13:08:57 24 In fact, here, Danielle, or Dani, as she signs
13:09:00 25 her name, seems to think that it might be okay, which is

13:13:47 1 Q. What's the basis for your testimony that
13:13:49 2 whoever communicated to him about this matter was not
13:13:52 3 very nuanced or careful about describing the
13:13:55 4 relationships and the policy?

13:13:59 5 A. Well, because our business happens at very fast
13:14:03 6 speed, and kind of you're delving into very detailed
13:14:07 7 choices of words and emails that people fluttered off
13:14:11 8 probably in a heartbeat. So I'm sure that, you know, we
13:14:15 9 agree with them, we agree internally, we agree, it's
13:14:18 10 policy. Like, we didn't care.

13:14:22 11 Q. And is that the basis for your testimony that
13:14:23 12 he was not very thoughtful about what he wrote?

13:14:28 13 A. I think if he thought that every single word of
13:14:30 14 his email was going to be carefully scrutinized in the
13:14:35 15 distant, many years future, I'm sure he could have
13:14:38 16 written it more accurately and inquired as to the nature
13:14:41 17 of these policies more carefully.

13:14:44 18 Q. Let's take a look at Exhibit 253.

13:15:21 19 A. I see it.

13:15:22 20 Q. All right. So this is an email from Apple
13:15:24 21 internally, subject, Google. March 7, 2007. Do you see
13:15:30 22 that?

13:15:30 23 A. I do see it.

13:15:31 24 Q. From Mark Bentley to a number of other
13:15:34 25 individuals. Do you see that?

13:15:35 1 A. I do see that.

13:15:36 2 Q. Do you happen to know who Mr. Bentley was at
13:15:38 3 Apple?

13:15:39 4 A. I have no recollection of Mr. Bentley.

13:15:41 5 Q. All right. And Mr. Bentley wrote, "Folks, I
13:15:44 6 know we all understand we can't recruit out of Google.
13:15:47 7 But can you please make sure your respective teams don't
13:15:51 8 get careless with this policy. A Google recruiter sent
13:15:54 9 an unsolicited email to one of our engineers today, and I
13:15:58 10 forwarded it to Dani. She's taking care of it and I want
13:16:01 11 to make sure we are honoring our side of the agreement."

13:16:05 12 I ask again, do you have any explanation for
13:16:06 13 how Mr. Bentley came to understand that there was an
13:16:10 14 agreement between the two companies on this subject?

13:16:12 15 MR. RUBIN: Objection. Form.

13:16:14 16 THE WITNESS: Look, I'm not privy to the
13:16:17 17 internals of Apple's communications or what Steve said to
13:16:20 18 these folks or whatnot. I only know my impression. My
13:16:23 19 impression was that it was a commitment we made to Steve
13:16:25 20 so we wouldn't piss him off. I think he seemed to feel,
13:16:29 21 and I'm sure, you know, we didn't mind that, you know,
13:16:31 22 they also didn't call in. That was never particularly
13:16:34 23 important to us.

13:16:36 24 I guess they're being I don't know, they
13:16:41 25 feel like they're being diligent in something that's

13:16:44 1 important to Steve or us or something.

13:16:45 2 BY MR. HEIMANN:

13:16:46 3 Q. Let's take a look at Exhibit 656, please.

13:17:42 4 A. Uh huh.

13:17:42 5 Q. So this is an email exchange in April of 2007

13:17:45 6 that begins with an email from Michael Dell excuse

13:17:47 7 me michael@dell. Do you know who that is?

13:17:54 8 A. I assume this is Michael Dell.

13:17:56 9 Q. And it is to Eric Schmidt, correct?

13:18:02 10 A. Yes.

13:18:02 11 Q. And he wrote in part, "I learned recently that

13:18:04 12 Google extend an offer to one of our sales guys, Sean

13:18:07 13 Berg.

13:18:08 14 "Not real happy about this and not the kind of
13:18:11 15 think," I assume that means thing, "we would expect given
13:18:15 16 our partnership.

13:18:16 17 "We should discuss next time we are together,
13:18:18 18 but I think we should have a general understanding that
13:18:21 19 we are not actively recruiting from each other."

13:18:24 20 Do you see that?

13:18:25 21 A. I do see that.

13:18:26 22 Q. All right. And then if I could skip up to
13:18:30 23 Mr. Schmidt's email, in which he says, "Let's put them on
13:18:35 24 the 'don't call into Dell' list for a while. Thanks,
13:18:40 25 Eric." Do you see that?

13:18:42 1 A. I do see that.

13:18:43 2 Q. All right. And then Shona Shona Brown steps
13:18:48 3 in at the last of the emails and says, "Maybe it makes
13:18:51 4 sense to just call EMG's attention to the 'do not call'
13:18:55 5 and sensitive lists. They have not reviewed in a while."

13:19:00 6 Do you see that?

13:19:01 7 A. I do see that.

13:19:02 8 Q. And then if we could go to Exhibit 864, and
13:19:35 9 sorry.

13:20:13 10 A. Do you want me to review the whole thing?

13:20:15 11 Q. I doubt it's necessary for you to read through
13:20:18 12 the whole thing, but I will be asking you if you can
13:20:20 13 identify that for us when we get to that point.

13:20:24 14 A. Okay. I'm sorry. Do you want me to what do
13:21:04 15 you want me to do?

13:21:05 16 Q. If you're ready, I'm ready to ask

13:21:06 17 A. I mean I scanned I scanned through it.

13:21:08 18 Q. All right. I can ask a question now?

13:21:07 19 A. Yeah.

13:21:09 20 Q. Well, if you need to look at it more carefully,
13:21:12 21 in

13:21:12 22 A. It depends on your question.

13:21:14 23 Q. in order to answer my question

13:21:16 24 A. Yeah.

13:21:15 25 Q. I'll give you a chance.

15:44:42 1 on my the end of my answer my question.

15:44:45 2 A. Okay.

15:44:45 3 Q. Doing it, and I couldn't pick up the answer.

15:44:48 4 All right.

15:44:52 5 Without vouching for the accuracy of what

15:45:02 6 Mr. Colligan says in his declaration

15:45:05 7 A. I'm glad you're not asking me to do that. Yes.

15:45:08 8 Q. I'm saying me in asking the question.

15:45:11 9 A. Okay.

15:45:11 10 Q. the essence of the declaration in the email

15:45:14 11 exchange appears to be that Mr. Jobs sought an agreement

15:45:20 12 with Palm relating to not recruiting employees from

15:45:30 13 Apple.

15:45:33 14 A. Actually, it says, "not hiring."

15:45:35 15 Q. All right. "Not hiring." Fair correction.

15:45:42 16 First of all, were you aware of or did you hear

15:45:44 17 anything about this exchange when it took place or

15:45:48 18 afterwards?

15:45:49 19 A. No, not that I can recall.

15:45:51 20 Q. All right. Do you know of any instance

15:45:53 21 strike that.

15:45:55 22 Were you made aware of any instances in which

15:45:57 23 Jobs reached out to any other companies seeking

15:46:01 24 agreements of this sort and was rejected?

15:46:06 25 A. Not that I recall.

15:46:18 1 Q. Did you view in that exchange that you had
15:46:21 2 with with Jobs back in 2005, I think it was now did
15:46:27 3 you view his request as including a request that Google
15:46:32 4 agree not to hire as distinguished from not to recruit or
15:46:36 5 not cold call?

15:46:39 6 MR. RUBIN: Objection. Form.

15:46:40 7 THE WITNESS: Boy, I can't remember what the
15:46:41 8 thing he said exactly on the call, no. I mean I think I
15:46:45 9 summarized it as best I could in that email. I don't
15:46:48 10 have any greater recollection than that.

15:46:50 11 BY MR. HEIMANN:

15:46:51 12 Q. We can look at the email again if we need to,
15:46:53 13 but my recollection is at least at one point in your
15:46:56 14 description of his statements he said something along the
15:46:58 15 lines of, if you hire any of these people, we will be at
15:47:03 16 war, or some such thing.

15:47:05 17 A. I mean I can look at it again, but, you know,
15:47:07 18 Steve was kind of irate and agitated and irrational about
15:47:15 19 lots of things, so

15:47:17 20 Q. So

15:47:17 21 A. I wouldn't I don't know. I don't remember
15:47:19 22 what words he used now. I can look it up and try to get
15:47:23 23 my summary as the best recounting.

15:47:26 24 Q. Let's take a quick look at it, just for that
15:47:28 25 one point.

15:47:29 1 A. Okay.

15:47:29 2 Q. It's it will be

15:47:35 3 A. Oh, here we go. Exhibit 1871.

15:47:39 4 Q. Okay.

15:47:39 5 A. Yes. That says the word "hire."

15:47:49 6 Q. There it is. You got it exactly right. You

15:47:51 7 quote him as saying, "If you hire a single one of these

15:47:53 8 people, that means war." And I guess my question to you

15:47:56 9 is, did you interpret that as a request that you agree

15:48:04 10 not to hire Apple people, or was that just something he

15:48:07 11 was saying in an angry mode that you took with a grain of

15:48:12 12 salt, or how did you interpret it?

15:48:15 13 A. Yeah, I mean I think he was just really angry

15:48:17 14 at the time over this one particular fellow, and yeah.

15:48:22 15 I mean he was just kind of crazy.

15:48:26 16 Q. All right. Let's switch

15:48:46 17 How did you interpret the kind of war that he

15:48:49 18 was talking about in the conversation that you had with

15:48:51 19 him? I mean how would Apple go to war with Google in

15:48:56 20 terms of what he was saying to you, as you understood it?

15:49:02 21 A. Boy, I mean I don't remember. It is so many

15:49:05 22 years ago. I don't think he meant ICBMs and nuclear

15:49:10 23 submarines and things like that.

15:49:11 24 Q. All right. I think that's fair.

15:49:26 25 A. He I don't remember. I think I think,

15:49:28 1 you know, we had our search deal, Safari that
15:49:31 2 periodically came up for renewal, and I assume he would
15:49:35 3 try to use a different search engine there, and I
15:49:39 4 don't remember now. I'm sure there were various bad
15:49:41 5 things he could do if he was very angry.

15:49:43 6 Q. Were there any potential patent issues between
15:49:46 7 the two companies at the time?

15:49:48 8 A. I don't remember any specific patents. I mean
15:49:52 9 Apple historically had significantly more patents than
15:49:56 10 Google. I don't recall if he made threats with respect
15:50:09 11 to patents in our case or not.

15:50:11 12 Q. All right. I'm going to change topics once
15:50:13 13 again with you.

15:50:16 14 Did there come a point in time when Facebook
15:50:19 15 presented a problem for Google's retention of

15:50:23 16 Let me stop there. We have to change the tape.
15:50:26 17 We may as well do that now.

15:50:29 18 THE VIDEOGRAPHER: This is the end of Video
15:50:30 19 No. 2. We're now off the record at 3:50.

15:50:33 20 (Recess was taken.)

15:57:27 21 THE VIDEOGRAPHER: We are now on the record at
15:57:28 22 3:57. This is the beginning of Video No. 3.

15:57:33 23 BY MR. HEIMANN:

15:57:34 24 Q. Okay. So at some point did Facebook present a
15:57:37 25 problem for Google's retention of employees?

15:57:47 1 A. Facebook ended up hiring away a modest number
15:57:51 2 of employees, and probably more so than any other company
15:57:54 3 I recall.

15:57:56 4 Q. Okay. Did at some point did Google come to
15:58:01 5 regard Facebook as a threat to Google's ability to retain
15:58:06 6 employees?

15:58:06 7 A. It was you know, it was definitely up there
15:58:10 8 in terms of, you know, the companies that had hired away
15:58:13 9 employees from Google. Like I said, Facebook was
15:58:16 10 probably number one.

15:58:17 11 Q. Did Google take any steps to address that
15:58:21 12 concern?

15:58:22 13 A. Yes.

15:58:22 14 Q. What did Google do in that regard? And let me
15:58:26 15 start back. The time frame here, can you give us at
15:58:28 16 least an approximate time?

15:58:33 17 A. I'd say the last few years, maybe three, four
15:58:41 18 years or so.

15:58:43 19 Q. All right. Let me show you a document that may
15:58:45 20 pinpoint that a little further.

15:58:47 21 A. Yeah.

15:58:47 22 Q. Exhibit 660. I know it is hard to reach back
15:58:49 23 and

15:58:50 24 A. Yeah.

15:58:50 25 Q. pinpoint dates.

15:59:58 1 A. Okay.

15:59:59 2 Q. All right. Does this help you place in time
16:00:04 3 the situation with Facebook?

16:00:06 4 A. Yeah, I guess this was closer to five or six
16:00:09 5 years ago.

16:00:12 6 Q. So this would be would be a point in time
16:00:14 7 prior well prior to Facebook's IPO, correct?

16:00:19 8 A. Yes.

16:00:20 9 Q. But when during a period

16:00:23 10 A. Look up

16:00:24 11 Q. Sorry, I stepped on your answer.

16:00:24 12 A. I need to look up when Facebook went public,
16:00:28 13 but, yeah, I'm pretty sure it was after '07. It was a
16:00:33 14 couple of years ago now?

16:00:35 15 Q. It was very recent, lawsuits all over the

16:00:36 16 A. Okay.

16:00:36 17 Q. Much more recent than 2007.

16:00:38 18 A. Yes. Yes.

16:00:40 19 Q. All right. So give me The Reader's Digest
16:00:45 20 version of this situation as you guys saw it with respect
16:00:48 21 to Facebook and the threat they posed?

16:00:51 22 A. The Reader's Digest version?

16:00:54 23 Q. Yes. I don't want to spend the rest of the day
16:00:57 24 here.

16:00:58 25 A. Well, I recall that Facebook hired away, you

16:01:01 1 know, some, multiple employees not a huge number, but
16:01:07 2 we took notice, and some notable employees. Furthermore,
16:01:11 3 you know, as I wrote in my message here, which was then
16:01:15 4 forwarded on, there were a variety of other little
16:01:19 5 companies that were kind of getting spun up, either
16:01:22 6 competitors of Facebook or in the social space and, you
16:01:25 7 know, all these little groups would leave kind of
16:01:28 8 everybody would want to start the next Facebook or
16:01:30 9 this was pre Instagram, but that kind of the idea that
16:01:33 10 you could have a very small start up that gets a big
16:01:37 11 payout very quickly.

16:01:40 12 Q. And how did that present a problem for Google?

16:01:42 13 A. I think a lot of employees were seduced by
16:01:45 14 the the kind of promise of quick riches.

16:01:49 15 Q. Quick riches presented by Facebook and the
16:01:52 16 other potential or I shouldn't say potential
16:01:55 17 start up companies?

16:01:56 18 A. Correct.

16:01:57 19 Q. And not everyone will understand why that is.
16:02:00 20 Can you explain why that is?

16:02:04 21 A. Yeah, I think there was a bubble. In fact, I'm
16:02:06 22 kind of impressed that I wrote this back in '07, but
16:02:09 23 there was quite of a sort of web 2.0 social bubble that,
16:02:13 24 you know, valued social companies very highly, sometimes
16:02:18 25 in acquisitions and, I can't recall if back then some of

16:02:23 1 them had gone public, even though Facebook did not, but
16:02:26 2 there was a real zeal and enthusiasm around it, and, you
16:02:33 3 know, it drew people to well, we should start our own
16:02:37 4 little company. And from a technical point of view a lot
16:02:40 5 of these things are very easy, you know, there's not very
16:02:44 6 many technical obstacles, and I can see how that might
16:02:48 7 have been appealing.

16:02:48 8 Q. And what steps if any did Google take in
16:02:51 9 response?

16:02:51 10 A. I remember we started [REDACTED]
16:02:59 11 [REDACTED] and
16:03:03 12 [REDACTED], and we would
16:03:07 13 [REDACTED]
16:03:10 14 [REDACTED]
16:03:13 15 [REDACTED]
16:03:17 16 [REDACTED]. So we maintained data on that,
16:03:20 17 and

16:03:21 18 Q. I'm sorry for interrupting. What kind of data
16:03:24 19 are you talking about?

16:03:25 20 A. Like I would get, I don't know, once a quarter
16:03:27 21 or something, a little table that said, you know,
16:03:29 22 whatever, Facebook hired [REDACTED] people from Google this
16:03:32 23 quarter, [REDACTED], and Google hired away
16:03:37 24 however many we did from those companies.

16:03:38 25 Q. And did you attempt to ascertain what kind of

16:03:41 1 compensation these folks were being offered or receiving
16:03:45 2 who were being hired away?

16:03:47 3 A. No, not

16:03:48 4 MR. RUBIN: Objection to form. Sorry.

16:03:52 5 THE WITNESS: No, I did not attempt to
16:03:53 6 ascertain that. These were summaries, like.

16:03:57 7 BY MR. HEIMANN:

16:03:57 8 Q. All right. Did Google, if not

16:03:59 9 A. Yeah.

16:03:59 10 Q. yourself personally, attempt to assemble
16:04:02 11 data on what kinds of compensation packages were luring
16:04:07 12 people away from Google?

16:04:09 13 A. [REDACTED]
16:04:13 14 [REDACTED].

16:04:16 15 Q. [REDACTED]?

16:04:19 16 A. [REDACTED]
16:04:21 17 [REDACTED]

16:04:24 18 [REDACTED],

16:04:30 19 [REDACTED]

16:04:33 20 [REDACTED]

16:04:35 21 [REDACTED]

16:04:39 22 [REDACTED].

16:04:42 23 Q. And what, if any, strategies did Google devise
16:04:45 24 to address that particular issue, the compensation
16:04:49 25 packages that were being offered to Google employees by

16:04:55 1 Facebook and the other companies?

16:04:56 2 A. I remember for a period of time we were we

16:04:58 3

16:05:02 4

16:05:06 5

16:05:09 6

16:05:11 7 Q. And in terms of job functions, what were the

16:05:17 8 what were the key functions that you were most concerned

16:05:20 9 about in terms of your employees that were being

16:05:22 10 recruited away? I mean, for example, were you concerned

16:05:26 11 about the sales guys? Were you concerned about

16:05:30 12 engineers? Were you concerned about top executive

16:05:32 13 talent? Were there categories that were of greater

16:05:36 14 concern than others?

16:05:37 15

A.

16:05:38 16

16:05:41 17

16:05:44 18

16:05:47 19 Q. Which ones do you think you would have most

16:05:49 20 been concerned with?

16:05:53 21

A.

16:05:56 22

16:05:59 23

16:06:02 24

16:06:05 25

16:06:09 1 [REDACTED].

16:06:29 2 Q. Let me ask you to take a look at Exhibit 608.

16:06:44 3 So the document I showed you in the form of
16:06:46 4 Exhibit 660 was October of '07, and this is a document
16:06:50 5 dated November of 2007.

16:06:52 6 A. Uh huh.

16:06:55 7 Q. Take a moment to look it over.

16:07:02 8 A. Uh huh. I see it.

16:07:17 9 Q. Can you explain to us what this reflects about
16:07:19 10 the strategy, or at least one of the strategies that
16:07:21 11 Google adopted to meet the issues that you were facing at
16:07:26 12 the time?

16:07:26 13 A. I mean, look, I see what I see in this email,
16:07:34 14 the notion is that [REDACTED]

16:07:37 15 [REDACTED]
16:07:41 16 [REDACTED].

16:07:47 17 Q. All right. And if you can focus for a moment
16:07:49 18 on the email that looks like it starts the chain here,
16:07:54 19 and it is not clear to me, I'm trying to make this out,
16:08:01 20 but an email from Vijay Gill, I think it says.

16:08:06 21 A. Yes.

16:08:09 22 Q. And he says, in part, "Is this true," after
16:08:11 23 quoting what I gather was his understanding of the policy
16:08:13 24 change that was implemented at Google.

16:08:14 25 A. Uh huh.

16:08:14 1

Q. [REDACTED]

16:08:17 2

16:08:20 3

16:08:22 4

16:08:26 5

Do you know what he's referring to when he

16:08:28 6

makes reference to Google's equal pay for equal

16:08:32 7

performance policy?

16:08:34 8

A. I mean it's I know what I see here. I think

16:08:36 9

it's just the notion of I I assume he's upset that,

16:08:43 10

you know, [REDACTED]

16:08:46 11

16:08:50 12

16:08:53 13

16:08:56 14

16:08:57 15

Q. All right. Was it, in fact, a policy at Google

16:09:00 16

at the time to attempt to compensate employees equally

16:09:07 17

for equal performance?

16:09:10 18

A. I think there is a there is an idealism

16:09:13 19

about fairness, but, no, there was not a policy. There

16:09:17 20

are any number of things that can influence an employee's

16:09:21 21

compensation, such as, you know, the timing of their

16:09:23 22

start and when they got their stock options, you know,

16:09:25 23

the day that happened, you know, when their reviews

16:09:30 24

happened to line up with, you know, various

16:09:34 25

accomplishments that they had; and quite frankly, you

16:09:37 1 know, some people end up unfortunately, you know, maybe
16:09:42 2 they got overcompensated too much to begin with or

16:09:46 3 So, you know, ideally, you know, compensation
16:09:50 4 would completely follow performance, but I think the
16:09:54 5 realities of the world cause a lot of fluctuation.

16:09:58 6 Q. So let me put it differently.

16:10:01 7 Recognizing that there are all sorts of of
16:10:05 8 things that can impact the actual compensation any given
16:10:10 9 employee receives in the end, was it nonetheless Google's
16:10:13 10 policy to attempt to be fair in in the form of equally
16:10:17 11 compensating for equal performance?

16:10:21 12 A. I I think we definitely had that ideal. You
16:10:25 13 know, when you say did we attempt, you know, we didn't do
16:10:29 14 so by trying to, I don't know, cut people's salaries, for
16:10:32 15 example, if we felt they weren't living up to a I mean
16:10:36 16 you can take that to different extremes.

16:10:38 17 Q. Well, I'm not suggesting that you would take it
16:10:39 18 to extremes. I'm really just trying to get at

16:10:42 19 A. I mean there is definitely an ideal of a
16:10:45 20 meritocracy and compensation to be determined by
16:10:49 21 contribution.

16:10:52 22 Q. Let me ask you to take a look at Exhibit 614.

16:11:45 23 A. Uh huh.

16:11:47 24 Q. Have you had a chance to look at this is a
16:11:50 25 long document, but I'm really going to be focusing on the

16:11:53 1 bottom of the first page.

16:11:55 2 A. Uh huh.

16:11:56 3 Q. Again, you have to say "yes" or "no" or "I
16:11:59 4 don't know."

16:12:02 5 MR. RUBIN: Was there a question? You just
16:12:04 6 said, "focusing on the bottom of the first page," so I'm
16:12:07 7 not technically sure there was a question.

16:12:07 8 BY MR. HEIMANN:

16:12:07 9 Q. The question is, have you had a chance to look
16:12:09 10 at the page I'm going to focus on.

16:12:12 11 MR. RUBIN: Have you had a chance to look at
16:12:13 12 it, is the question?

16:12:15 13 THE WITNESS: Have I only looked at the first
16:12:16 14 page?

16:12:17 15 MR. RUBIN: No. He's not limiting it. He is
16:12:18 16 just asking, have you had a chance to look at the
16:12:20 17 document.

16:12:20 18 THE WITNESS: I mean I glanced at it.

16:12:21 19 BY MR. HEIMANN:

16:12:22 20 Q. Let's do this. Let me point out what I'm going
16:12:23 21 to ask you

16:12:24 22 A. Okay.

16:12:24 23 Q. and if you want to look at more of the
16:12:27 24 document than you have already, you are free to do so
16:12:30 25 before you try to answer the question.

16:21:25 1 neglected to designate this deposition as highly
16:21:34 2 confidential, Attorneys' Eyes Only, so I want to go ahead
16:21:39 3 and do that now.

16:21:39 4 MR. HEIMANN: Fine.

16:21:41 5 THE WITNESS: I assume that the speech for
16:21:42 6 Hanna's Bat Mitzvah is not

16:21:47 7 BY MR. HEIMANN:

16:21:48 8 Q. Sorry?

16:21:48 9 A. I assume the speech for Hanna's Bat Mitzvah is
16:21:54 10 not going to be relevant to your questions.

16:21:56 11 Q. I trust not.

16:23:52 12 A. Okay. I've read it. What was the question
16:23:54 13 again?

16:23:54 14 Q. All right. So is this part of the effort you
16:23:59 15 referred to a moment ago on Mr. Rosenberg's part to
16:24:04 16 address the problem by talking directly with Sheryl
16:24:08 17 Sandberg?

16:24:12 18 MR. RUBIN: Objection. Form.

16:24:13 19 THE WITNESS: Sorry. When I was talking about
16:24:14 20 the non solicitation agreement, I meant it in the sense
16:24:18 21 of probably Sheryl's message at the bottom of page 2.

16:24:24 22 BY MR. HEIMANN:

16:24:25 23 Q. Right.

16:24:26 24 A. It says, "We are being very strict on the
16:24:28 25 Google non solicit," which I assume means her her and

16:24:36 1 other employees' employment agreements at Google. That's
16:24:41 2 what I was referring to.

16:24:42 3 Q. So your understanding of this reference is, as
16:24:44 4 you described it, not to a general sort of mutual
16:24:47 5 non solicitation agreement between the companies, but
16:24:50 6 rather specific to her contractual obligations.

16:24:55 7 A. Yes. That was what I was referring to.

16:24:57 8 Q. All right. And that's your interpretation of
16:24:59 9 what she's talking about here in this paragraph where she
16:25:01 10 refers to the Google non solicit agreement.

16:25:05 11 A. Correct.

16:25:05 12 Q. All right. We're going to switch topics again.
16:25:38 13 Let's go to Exhibit 1753.

16:26:19 14 A. Okay.

16:26:19 15 Q. All right. So this is an email from June of
16:26:25 16 2004 from Shona Brown, correct?

16:26:32 17 A. Yes.

16:26:32 18 Q. And this would have been shortly before
16:26:35 19 Google's IPO, if I recall your testimony

16:26:37 20 A. Yes.

16:26:38 21 Q. from earlier today?

16:26:39 22 A. That's correct.

16:26:39 23 Q. And this would have been shortly after Shona
16:26:42 24 Brown was hired by Google as well, correct?

16:26:45 25 A. I don't remember the exact date of that. I

16:26:48 1 don't remember when she started.

16:26:52 2 Q. All right. Fair enough. So without having to
16:26:56 3 read through the document, in general, what was the
16:26:59 4 subject of the discussion as reflected in this email?

16:27:07 5 A. It looks like the desire to ramp our
16:27:10 6 engineering hiring.

16:27:13 7 Q. In a very significant way, correct?

16:27:16 8 MR. RUBIN: Objection. Form.

16:27:20 9 THE WITNESS: Very significant? Yeah. I mean
16:27:23 10 I I know it certainly has flowerful language here,
16:27:29 11 "dramatically increase." I don't know what it in
16:27:33 12 practical terms it ended up being, but yes. This
16:27:39 13 this reflects a desire to have a very significant
16:27:45 14 increase.

16:27:45 15 BY MR. HEIMANN:

16:27:46 16 Q. All right. And it also discusses well,
16:27:50 17 strike that.

16:27:50 18 So how did Google plan or intend to accomplish
16:28:08 19 the very dramatic increase in engineering talent they had
16:28:13 20 perceived to be needed as reflected in the email?

16:28:22 21 A. I don't recall.

16:28:27 22 Q. Not even generally?

16:28:31 23 A. I mean the main thing that over time has
16:28:35 24 successfully increased hiring rates is having more
16:28:37 25 recruiters.

16:28:38 1 Q. Okay. And let's focus on the sources from
16:28:42 2 which those recruiters would seek engineering talent.
16:28:45 3 What were the principal sources as planned by Google?

16:28:50 4 A. The most successful ones we had all the time, I
16:28:53 5 believe, were employee referrals.

16:28:56 6 Q. Employee referrals meaning referrals of what?

16:28:58 7 A. An employee will say, look, my friend Joe is a
16:29:01 8 great whatever, software engineer.

16:29:06 9 Q. All right. So let's be more basic about this.
16:29:09 10 One source of engineers that Google was looking
16:29:12 11 to hire would have been novice engineers just out of
16:29:18 12 school or not with much experience, right?

16:29:21 13 A. Uh huh. Uh huh. Yep.

16:29:24 14 Q. But that wasn't the principal source of
16:29:26 15 engineers you were interested in at this point in time,
16:29:28 16 was it?

16:29:29 17 MR. RUBIN: Objection. Form.

16:29:30 18 THE WITNESS: I'm not sure about that. I don't
16:29:31 19 know how many of them were out of school versus other
16:29:34 20 companies versus what.

16:29:35 21 BY MR. HEIMANN:

16:29:36 22 Q. Well, one of the things you wanted to do is
16:29:39 23 I think it is clearly reflected in this email, was to
16:29:42 24 hire a significant number of experienced engineers who
16:29:45 25 would be able to start producing for Google right away;

16:32:28 1 A. Yes.

16:32:28 2 Q. "[REDACTED] new engineers) will require a fall

16:32:32 3 2004 campus hiring program that generates [REDACTED] hires, [REDACTED]

16:32:37 4 percent campus hiring." Isn't that what you are talking

16:32:39 5 about there?

16:32:40 6 MR. RUBIN: Objection. Form.

16:32:41 7 THE WITNESS: Yeah, I mean I just meant

16:32:43 8 generally that there are multiple sources of hires, but,

16:32:45 9 yeah, campus hiring would cover some of those. So what

16:32:48 10 was your question again?

16:32:51 11 BY MR. HEIMANN:

16:32:59 12 Q. My question was whether or not this doesn't

16:33:00 13 indicate that your plans for campus hiring were to get [REDACTED]

16:33:04 14 percent of what you wanted out of recent graduates from

16:33:07 15 school as opposed to seasoned engineers that you would

16:33:11 16 get elsewhere.

16:33:19 17 A. Seasoned? I don't know. You are putting a lot

16:33:21 18 of qualifiers. I [REDACTED]

16:33:24 19 [REDACTED] [REDACTED]

16:33:29 20 [REDACTED] [REDACTED]

16:33:32 21 [REDACTED].

16:33:36 22 [REDACTED] [REDACTED]

16:33:40 23 [REDACTED]

16:33:43 24 [REDACTED] [REDACTED]

16:33:49 25 [REDACTED]

16:33:53 1

[REDACTED]

16:33:57 2

But anyhow, yeah, a portion of the hires here is listed as coming from universities.

16:34:11 4

Q. Was one of the sources for experienced engineers that you were planning on hiring was to hire them from other companies, other high tech companies?

16:34:15 5

16:34:19 6

16:34:22 7

A. Yeah. A lot of employees come from other companies.

16:34:25 8

16:34:27 9

Q. And was one of the means by which you planned on seeking out and soliciting those types of engineers was to cold call directly into the companies that they were working for at the time?

16:34:29 10

16:34:35 11

16:34:39 12

16:34:41 13

A. I honestly can't tell you what the techniques that the recruiters were using at the time.

16:34:44 14

16:34:48 15

Q. All right. If you can't tell us that, who could answer that question?

16:34:52 16

16:34:54 17

A. In 2004? You want to know what the mix of the referrals was?

16:34:59 18

16:35:00 19

Q. Well, I'm sorry. What do you mean when you say "mix of referrals was"?

16:35:02 20

16:35:03 21

A. So the mix of, you know, sort of sources. You are saying cold call. I mean, for example, many of our successful candidates in fact our data suggests that over time that our more successful employees are usually referred to by a friend at the company, at Google. So,

16:35:06 22

16:35:10 23

16:35:13 24

16:35:17 25

16:35:20 1 for example, that would not be a cold call.

16:35:22 2 Q. Well, it might be, couldn't it, if if, for
16:35:24 3 example, the Google employee identified engineer X in
16:35:32 4 company Y having no reason to believe that that engineer
16:35:35 5 was interested in leaving and going to work for somebody
16:35:38 6 else, but telling you, that is a good engineer,
16:35:41 7 contacting that person would be a cold call as as you
16:35:44 8 understand it; isn't that right?

16:35:46 9 MR. RUBIN: Objection. Form.

16:35:47 10 THE WITNESS: I don't know. I don't think
16:35:49 11 necessarily that would be.

16:35:50 12 BY MR. HEIMANN:

16:35:50 13 Q. So you think under the terms of the policy that
16:35:52 14 Google had, if a Google employee identified another
16:35:57 15 company's engineer as a person that might be good for
16:35:59 16 the for Google, but with no reason to believe that
16:36:03 17 person had any interest, desire, or plans to leave the
16:36:10 18 company he was then working for, that wouldn't be a cold
16:36:12 19 call?

16:36:13 20 MR. RUBIN: Objection to form.

16:36:14 21 THE WITNESS: I think when you say without any
16:36:15 22 interest, desire, plans to leave, if somebody had
16:36:18 23 absolutely no chance of leaving, that would be kind of a
16:36:22 24 weird referral. So I don't know if that's

25 //

1 I, Rosalie A. Kramm, Certified Shorthand
2 Reporter licensed in the State of California, License No.
3 5469, hereby certify that the deponent was by me first
4 duly sworn and the foregoing testimony was reported by me
5 and was thereafter transcribed with computer aided
6 transcription; that the foregoing is a full, complete,
7 and true record of said proceedings.

8 I further certify that I am not of counsel or
9 attorney for either of any of the parties in the
10 foregoing proceeding and caption named or in any way
11 interested in the outcome of the cause in said caption.

12 The dismantling, unsealing, or unbinding of the
13 original transcript will render the reporter's
14 certificates null and void.

15 In witness whereof, I have hereunto set my hand
16 this day: March 30, 2013.

17 X Reading and Signing was requested.

18 Reading and Signing was waived.

19 Reading and signing was not requested.

20

21

22

ROSALIE A. KRAMM

23

CSR 5469, RPR, CRR

24

25

**CORRECTIONS TO DEPOSITION TRANSCRIPT OF
SERGEY BRIN, DATED MARCH 19, 2013**
In re High-Tech Employee Antitrust Litigation
Case No. 11-CV-2509-LHK (N.D. Cal.)

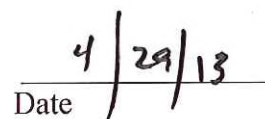
Page:Line	Amendment	Reason for Amendment
12:13	Insert "claims" after the word "complicated"	correction to transcript error
14:23	Replace: "is" With: "was"	correction to transcript error
20:5	Insert "a" after the word "that's"	correction to transcript error
25:25— 26:1	Replace: "and not very significant maintaining that relationship" With: "and it was not very significant to maintain that relationship"	correction and clarification
32:7	Replace: "employees." With: "employees?"	correction to transcript error
35:12	Replace: "expensively" With: "extensively"	correction to transcript error
37:16-17	Replace: "taking a lot of metaphor" With: "using a metaphor"	correction and clarification
40:13	Replace: "spoken" With: "spoke"	correction to transcript error
42:21	Replace: "lives" With: "lived"	correction to transcript error
45:4	Replace: "at—you know," With: "with, you know, the"	correction and clarification

Page:Line	Amendment	Reason for Amendment
61:6	Insert "days" after the phrase "those two"	correction and clarification
61:12	Replace: "exactly" With: "exact"	correction to transcript error
63:10	Insert "that" after the word "indicate"	correction to transcript error
64:1	Insert "that" after the word "mind"	correction to transcript error
65:5	Replace: ", and I --" With: "in"	correction and clarification
65:20	Replace: "other some" With: "some other"	correction to transcript error
69:1	Delete "the"	correction to transcript error
70:2	Replace: "is" With: "in"	correction to transcript error
73:5	Replace: "things" With: "ways"	correction and clarification
74:16	Replace: "probably might as well the whole board" With: "probably might have as well to the whole board"	correction and clarification
95:23	Replace: "manage" With: "imagine"	correction to transcript error
108:3	Insert "a" before the phrase "fairly special circumstance"	correction to transcript error
131:9	Replace: "Ever this group"	correction and

Page:Line	Amendment	Reason for Amendment
	With: "Ever? This group"	clarification
143:14	Replace: "relatively overlap in skillset" With: "relatively overlapping in skillsets"	correction and clarification
165:12	Replace: "GNA" With: "G & A"	correction to transcript error
165:13	Replace: "restriction" With: "restrictions"	correction to transcript error
190:10	Replace: "flowerful" With: "flowery"	correction to transcript error
202:12	Replace: "county" With: "country"	correction to transcript error
205:8	Delete "The"	correction to transcript error

Subject to the above changes, I certify that the transcript is true and correct.


Signature


Date